



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

CRS

Docket No: 5222-99

29 February 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED], USN,

Ref: (a) 10 U.S.C. 1552
(b) DOD Directive 6130.3
(c) DOD Instruction 1332.38

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show that on 1 November 1998 he was transferred to the Fleet Reserve under the Temporary Early Retirement Authority (TERA) vice being discharged on 8 July 1999.

2. The Board, consisting of Mr. Lightle, Mr. McCulloch, and Mr. Silberman, reviewed Petitioner's allegations of error and injustice on 9 February 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner reenlisted in the Navy on 9 May 1986 for six years as an CTT1 (E-6) with more than nine years of prior active service.

d. On 15 June 1994 a physical evaluation board found Petitioner unfit for active duty due to chronic venous insufficiency with a history of recurrent pulmonary emboli, mild

post-phlebotic syndrome of the right lower extremity, and macrocytosis. On 30 July 1994 he was honorably separated and transferred to the Temporary Disability Retired List (TDRL).

e. On 22 October 1998 a medical reevaluation found Petitioner fit for duty and eligible for reenlistment.

f. On 2 February 1999 a Military Enlistment Processing Station (MEPS) found Petitioner unfit for enlistment. While it appears that MEPS rejected him because of a disagreement with the recent medical evaluation, Petitioner also was five pounds overweight and exceeded the 23 percent body fat requirement. Therefore, because he was unable to reenlist, on 8 July 1999 Petitioner was honorably discharged by reason of expiration of term of service.

g. Reference (b) states that individuals found fit for duty while on the TDRL should be permitted to reenlist.

h. Reference (c), at paragraph B1a of Part 7 to enclosure (3) states, in part, as follows concerning individuals found unfit for duty:

....(servicemembers) shall be afforded the opportunity to elect separation for physical disability or to apply for, and if approved, nondisability retirement under the Temporary Early Retirement Authority (TERA) Further, the same opportunity shall be afforded to members recommended for placement on or separation from the TDRL.

Since Petitioner was found fit for duty, he was not recommended for discharge from the TDRL. However, the ultimate result was the same since he was ultimately not allowed to reenlist.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. Despite his being overweight and exceeding the body fat requirement, the Board believes that Petitioner should have been reenlisted upon separation from the TDRL as allowed by regulations then in effect. However, given the reasons that Petitioner was placed on the TDRL, the Board concludes that it would now be appropriate to give him early retirement since he had served his country well for more than 15 years. Therefore, the Board believes that his record should be corrected to show he was transferred to the Fleet Reserve under TERA, effective 1 November 1998. Accordingly, the Board recommends that Petitioner's record be corrected to show that he was not discharged on 8 July 1999 but continued on the TDRL until 31 October 1998 when he was transferred to the Fleet Reserve under the provisions of reference (c) and TERA.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was not discharged on 8 July 1999 but continued on the TDRL.

b. That the record be further corrected to show that he was released from the TDRL on 31 October 1998 and transferred to the Fleet Reserve under TERA, effective 1 November 1998.

c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

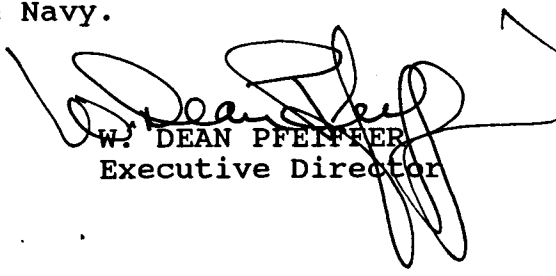
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director